

MONTANA PUBLIC DEFENDER COMMISSION

Central Services Conference Room
44 W. Park
Butte, MT

May 5, 2017

DRAFT MINUTES

Commissioners Present

Mark Parker, (Chair), Billings; Ann Sherwood, Pablo; Larry Mansch, Missoula; Maylinn Smith, Missoula; Mike Metzger, Billings; Margaret Novak, Chester

Commissioners Absent

Roy Brown, Billings; Brian Gallik, Bozeman

Staff Members Present

Bill Hooks, Chief Public Defender; Chad Wright, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Peter Ohman, Interim Chief Administrator and Training Coordinator; Wendy Johnson, Contract Manager; Carleen Green, Accounting Supervisor; Cathy Doyle, Administrative Specialist

Interested Parties

Jim Taylor

1. Call to Order

Chairman Mark Parker called the meeting to order at 8:30 a.m.

2. Approve Minutes of January 20, 2017 Meeting (*Action Item)

Commissioner Mansch moved to adopt the minutes as drafted. Commissioner Smith seconded and the motion carried.

3. Budget Issues

A. 2017 Biennium Fiscal Update

Accounting Supervisor Carleen Green reported that the FY 17 shortfall is anticipated to be approximately \$2 million. The agency received supplemental funding in that amount in HB 2, and it will go to Program 3.

4. Legislative Issues

A. 2019 Biennium Executive Budget ([HB 2](#))

Ms. Green went through the budget item worksheet in detail, showing the final action of the Legislature by program. She noted that although the agency's funding is not one-time-only (OTO) for the 2019 biennium (as it was for the 2017 biennium), it is not designated as biennial. This means the agency will not be able to borrow from FY 19 to cover any shortfall in FY 18.

In Program 1, the only new proposal forwarded by the Governor's office was for 5 FTE resource advocates, and the Legislature did provide both the FTE and the funding (NP 8). They also provided OTO contingency funding of \$500,000 per year for Program 1 (NP 88). The first year is contingent upon implementing "a consistent and measurable statewide eligibility determination methodology in all regions." The second year is contingent on implementing a "measurable soft cap system for

contract attorneys as well as a system for potential award of flat fee contracts to contract attorneys.” Funding was reduced in anticipation of the changes made in the Sentencing Commission’s main bill, HB 133, which are expected to reduce caseloads (NP 133).

The 1.5 FTE hired with the Commission’s discretionary funds in Program 2 during the 2017 biennium were restored in the zero based budget, and .5 FTE was included in the appropriation rebase for a total of 16 FTE.

Program 3 ended with a total of 12 FTE. None of the requested new proposals were funded. Funding was reduced to reflect the impact of HB 59 (representation of putative fathers) and there was an adjustment for contract costs put in by the legislative fiscal analyst (NP 59 and NP 319).

The Legislature agreed to replace five VisionNet machines in Program 4 (PL 7) and funded a new SABHRS fee (NP 56). Effective July 1, OPD will no longer use a state special revenue account for public defender fee collections; they will go into the general fund instead (NP 62). There was no funding provided for rent or salary adjustments.

The agency’s total funding for each year of the 2019 biennium is less than the FY 17 appropriation plus the \$2 million supplemental funding. The difference is approximately \$4.5 million in FY 18, and \$5.1 million in FY 19.

B. Status of Task Force Legislation

The changes made in the Task Force bills that passed (HB 59, HB 62, HB 65, HB 77 and HB 89), as well as HB 133 and others, are expected to reduce OPD’s caseloads, and ultimately, contract attorney costs. The holistic defense bill (HB 89) passed with no funding. Commissioner Sherwood will be available to provide technical assistance to any office involved in the pilot projects.

C. Agency Reorganization ([HB 77](#))

The agency reorganization bill, HB 77, has been transmitted to the Governor. The executive director is to be hired by July 1. The Governor’s signature kicks in the 30-day timeline for the Commission to submit a list of nominees. Other provisions of the bill are effective July 1.

As of July 1, the Commission is advisory only. The agency is required to report to the Law and Justice Interim Committee (LJIC) on the status of the termination of the Commission by September 1, 2018. Chief Public Defender Bill Hooks thinks the intent is that if the LJIC isn’t happy with the way things are going, they could introduce legislation to make changes. Commissioner Sherwood asked how the staff feels about the change in structure. Chief Hooks says it is shaky in Program 1. There is uncertainty about the management structure, the workload continues to be crushing, the status of the mitigation modified FTE is unknown, and funding issues persist. However, there is a lot of commitment to public defense in the agency.

5. Process for Creating List of Nominees for Executive Director (*Action Item)

The Governor’s office hasn’t provided Chairman Parker with any guidance on a process, so he polled the group for ideas. Commissioner Sherwood suggested using the process the judiciary uses for district court judge nominations. An announcement goes out, people apply online, public comment is accepted. Commissioner Smith agreed. She also recommended taking the duties in the statute and combining those with the previous chief administrator position to develop a list of qualifications. Commissioner Mansch said that experience running an agency isn’t enough; the person needs to be committed to public defense.

Conflict Coordinator Kristina Neal and Chief Hooks agreed with Commissioner Mansch. The candidate has to be an attorney with public defender experience and a client-based focus. Interim Chief Administrator Peter Ohman said that although commitment to public defense is important, the reason we are in this boat is because public defenders have been in charge. He said the agency needs someone who can manage budgets in a fiscally responsible way. You can't bring more of the same to the governor's office.

Commissioner Novak wants a person good at managing media presence, who understands the importance of public relations and will "get the word out" so that the public hears positive things instead of failures. Commissioner Metzger said that the minimum qualifications need to be identified, and then the additional preferred qualifications (e.g. attorney versus non-attorney).

Jim Taylor said that he is here to put his name in the hat for consideration. Chairman Parker still wanted to hear his ideas. Mr. Taylor said that although holistic defense holds long-term prospects, it is not going to save any money. The agency needs to look for grants and build a communication strategy to create a base of support with the public and the legislature. Transparency and better data tracking will help build that support. "Participatory defense" is a new model worth looking at. Mr. Taylor encouraged developing an outreach project to all large law firms where OPD would provide training and courtroom time in exchange for pro bono work. He also suggested reaching out to staff to search for new ways of doing things better.

Chairman Parker thinks the qualifications should not be limited too much in case that person with the magic component of leadership appears. He plans to cast a wide net. He also noted that they are just creating a list of nominees, and the DOA director has no obligation to hire from the list.

Commissioner Sherwood moved to limit the list of nominees to a maximum of three. Commissioner Novak seconded and the motion carried.

The attorney qualification was discussed. Chairman Parker suggested that a JD is strongly preferred. Commissioner Sherwood would rather make it be a requirement.

Chairman Parker said that every application will be made public, and that should be made clear when inviting submissions. He wants the public to have input at every stage. The criteria must also be clear, as well as the fact that DOA will have their own protocol for the actual job posting. Commissioner Novak would like to request assistance from the DOA Human Resource department since they have assisted the Commission previously.

Chairman Parker will take public comment, then ask for ratification of the following decisions:

1. The Commission will submit no more than a three-person list of nominees to DOA;
2. All applications will be public knowledge;
3. Being an admitted attorney is strongly encouraged;
4. The Commission will request assistance from DOA HR, specifically about the nomination process and if they are looking for certain qualifications.

6. Public Comment

Mr. Taylor noted a couple of problems with HB 77. In section 7, OPD was previously exempt from oversight by the State Administration and Veterans' Affairs Committee. The change in the bill was an oversight, and OPD will continue to report to the LJIC. A bigger problem is section 45, which repeals the Commission. Mr. Taylor consulted with legislative staff about the conflict between section 2 making the Commission advisory, and section 45 repealing it. Legislative staff believe that the repealer trumps everything else in the bill, eliminating the Commission effective July 1. He will forward their response to the Commission.

Mr. Taylor also encouraged the new director to make an effort to reach out to Indian Country and establish working relationships. Native Americans are over-represented in terms of incarceration. He is leaving for Ghana tomorrow for three weeks, but would be available for an interview May 30 or later.

5. Process for Creating List of Nominees for Executive Director (*Continued*) (*Action Item)

Commissioner Novak moved to ratify the Commission's work and adopt items 1-4 above. Commissioner Smith seconded. Commissioner Sherwood made a substitute motion that being a licensed attorney, not necessarily in Montana, is a minimum qualification. Commissioner Smith seconded. Commissioner Novak likes the "preferred" language instead. The question was called and the motion carried with one opposed.

7. Committee Reports

A. Personnel Committee—Performance Evaluation Process

The members agreed that it is too late for the Commission to finish this process; it will be the role of the new director. Commissioner Novak suggested asking the candidates a question regarding experience in this area.

B. Strategic Planning Committee—Quarterly Plan Review

Commissioner Novak is on this committee. She said that the process died when Commissioner Olson left. With the Task Force and the reorganization, it is a moot point.

8. Work Session for Developing List of Nominees

Commissioner Sherwood would welcome more suggestions on developing the qualifications. She will distribute a draft by Tuesday. As members of the National Association for Public Defense (NAPD), Chief Hooks and Ms. Neal reached out to the NAPD Systems Builders Committee and received a list of competencies and a job description that they will share with Commissioner Sherwood. Commissioner Smith will provide the job description for the OPD chief administrator position as a reference, too.

To clarify, this will be the criteria which the Commission will use to develop a list of nominees, not the actual job posting, which will be handled by DOA.

The call for nominees announcement will be posted nationwide, including the NAPD, National Legal Aid and Defender Association, National Association of Criminal Defense Lawyers, State Bar of Montana, Montana Association of Criminal Defense Lawyers, and OPD websites. Applicants will be asked to submit a letter of interest and a resume no later than May 26. All materials will be posted to OPD's website as they are received. Public comment will also be posted, and will be accepted until the date of interviews. Interviews will be conducted by phone or in Butte on June 1 in a public meeting. Chairman Parker intends to keep the process completely open.

Commissioner Smith will reach out to Attorney General Tim Fox for an opinion regarding the status of the Commission. The way she reads HB 77, they repealed the Commission, but created an advisory commission instead—a reincarnation so to speak. Chairman Parker intends to march forward on that basis.

9. Public Comment

There was no additional public comment.

10. Present Plaques to Members

Chairman Parker presented plaques to the members in appreciation for their service. Chief Hooks thanked everyone for their hard work.

11. Old Business/New Business

*A. Process for Finalizing List of Nominees (*Action Item)*

This item was previously addressed.

12. Adjourn

The meeting adjourned at 12:40 p.m.

The next meeting is scheduled for June 1, 2017 in Butte